



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

<u>SOMERSWORTH PUBLIC ADMINISTRATORS'S</u>	:	
<u>ASSOCIATION</u>	:	
	:	
	:	
Petitioner	:	CASE NO. M-0576:3
	:	
v.	:	DECISION NO. 90-12
	:	
CITY OF SOMERSWORTH	:	
	:	
	:	
Respondent	:	
	:	
	:	

APPEARANCES

Representing the Somersworth Public Administrators' Association:

Donald E. Mitchell, Esq., Counsel

Representing City of Somersworth:

Dorothy M. Bickford, Esq., Counsel

Also Appearing:

Brian Tapscott, City Councilor
Philip Munck, City Manager
Patrick Cote, Police Chief

BACKGROUND

This is an Unfair Labor Practice Charge filed by the Somersworth Public Administrators' Association (SPAA) against the City of Somersworth, charging that the City breached a collective

bargaining agreement and made a law or regulation relative to the terms and conditions of employment that would invalidate a portion of the agreement entered into by the public employer making or adopting such law, regulation or rule.

The SPAA and the City entered in to a collective bargaining agreement on July 1, 1987 which provided that members of the SPAA would be entitled to attend seminars and conferences without expense to the member subject only to budgetary provisions. Article XI - Section 1. This contract was entered into in July of 1987 and continued through June 30 of 1989 and then from year to year unless otherwise provided.

During the course of the formulation of the FY 90 (July 1, 1989-June 30, 1990) budget for the City of Somersworth, the City Council requested the Manager to submit a list of additional possible budget reductions. One such recommendation was out-of-state travel. The Council accepted that suggestion and by their action, the Manager claimed that the Council intended to restrict department heads from attending national conventions or national training sessions that were held out of state. In addition, the Somersworth City Council passed Ordinance #48-89 stating that "no funds shall be expended to defray the costs of a department head attending a national convention or national training session more than once in every (5) years". The SPAA filed an unfair labor practice charge alleging that these actions on the part of the City Council deprived members of the bargaining unit of their protection under the collective bargaining agreement and alleged that unilateral change of working conditions had been enacted by the City of Somersworth.

The City and the SPAA were at the time, active in negotiations for a successor agreement.

FINDINGS OF FACT

1. Article XI - Section 1 provides that "All association members shall be entitled to attend seminars and conferences at no expense to the member, subject to budgetary provisions."

2. Negotiations between the SPAA and City began in January 1989 with respect to the negotiation of a successor agreement. The then current collective bargaining agreement was scheduled to terminate at the end of the fiscal year.

3. The subject matter represented by Article XI - Section 1 of the collective bargaining agreement was not discussed during the course of negotiations. Neither the City nor the SPAA proffered any changes with respect to the matters covered by that Article for negotiations.

4. The various City department heads submitted their budgets for the perusal of the City Manager and City Council Finance Committee in the spring of 1989. In the course of the budget deliberations, the matters related to travel, out-of-state or in-state, were not raised with the department heads.

5. At the request of the City Council, the City Manager submitted a list of possible reductions in the budget during the course of the budget deliberations including, but not limited to, estimated costs for out-of-state travel and training for all City employees.

6. Sometime on or about July 1, 1989, the City Council adopted a budget that reduced the total appropriation for travel training by an amount not specified at hearing in each of the various City departments.

7. On or about July 18, 1989, the City Manager communicated a memorandum to the City department heads indicating that it was the intent of the FY 90 budget that no department head go to a conference, convention or meeting of a national/international organization out-of-state this year at City expense.

8. In June of 1989, City Councillor Brian Tapscott sponsored a proposed change to the City ordinances which dealt with the subject of the attendance of department heads at national conventions or national training sessions. The ordinance sought to limit such attendance to once in every five (5) years.

9. On July 17, 1989, the City Council amended the ordinance #48-89 to provide that:

"No funds shall be expended to defray the costs of a department head attending a national convention or national training session more than once in every five (5) years."

The amendment was adopted by the City Council.

10. The contract between these parties provides for certain benefits relative to travel for conventions and training by the members of the bargaining unit.

11. Department heads have by past practice been given latitude to provide for travel and training, whether in-state or out-of-state without other restriction.

12. Pursuant to the City's charter, the department heads must stay within the budgetary allocation for a line item as voted by the City, unless permitted to adjust such amounts by charter or practice.

13. Since the matter of such travel has been negotiated and is a subject of the collective bargaining agreement, the City may not establish non-monetary restrictions limiting the benefit provided in the collective bargaining agreement in time, number or geography without further negotiation with the Union, either by budget footnote or by ordinance.

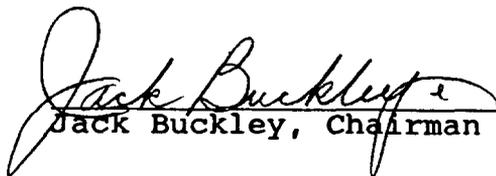
DECISION AND ORDER

After examining all the exhibits, testimony and evidence in this matter the Board finds:

A. The City Council has committed unfair labor practices against the Somersworth Public Administrators' Association by unilaterally changing the conditions of employment which are subject to provisions of the collective bargaining agreement and the requirement to bargain in good faith; and has by adoption of Ordinance #48-89 made a rule or regulation or adopted a rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation or rule.

B. The City is ordered to cease and desist from the enforcement of any such order or to interfere in the exercise of the rights of the employees of the SPAA in regard to travel and training.

Signed this 24th day of January, 1990.



Jack Buckley, Chairman

Also voting, Richard E. Molan, Esquire, Seymour Osman. Also in attendance Evelyn C. LeBrun, Executive Director.